

**CONSTRUCTION OF THE BUILDING OF THE RESEARCH AND
DEVELOPMENT INSTITUTE FOR INFORMATION TECHNOLOGY OF
BIOSYSTEMS (BIOSENSE) IN NOVI SAD, SERBIA
(PROCUREMENT NO. IOP/43-2020/RD)**

Clarification no. 13

Issued on July 7, 2020

Regarding the list of questions that the Employer, Public Investment Management Office Belgrade, No. 11 Nemanjina street, have received from the potential bidders, concerning the procurement procedure: Construction of the building of the Research and Development Institute for Information Technology of Biosystems (BioSense) in Novi Sad, Serbia no. IOP/43-2020/RD, we give you the following answers:

Question 1:

Which criteria applies for Tender award?

Initially, in the Letter of invitation, it is stated that the Tender will be awarded to a tenderer which is compliant and technically responsive to Tender documents, with the Lowest quoted price. After reviewing the remainder of Tender documents it is stated that these are "favorable" criteria, whereas a Tenderer does not have to be fully responsive to Tender documents, but rather "substantially" responsive, whilst enabling the Employer to accept a quotation which is not responsive to Tender Document and/or with a higher price.

Excerpts from Tender Documents:

- Section 1, Paragraph 1, page no. 13: The Tender Evaluation criterion is the lowest price of the compliant and technically responsive tenders.
- Paragraph 27.2, page no. 30: The Tender evaluation criterion is lowest price of the compliant and technically responsive tenders. The Tenders will then be ranked from the lowest to the highest price. The lowest Evaluated Tender is the most favourable.
- Paragraph 29.1 page no. 3: Subject to paragraph 27, the Employer will award the Contract to the tenderer whose tender has been determined to be substantially responsive to the Tender Documents and who has the Lowest Evaluated Tender Price, provided that such tenderer has been determined to be qualified.
- Section 3, Volume I, Paragraph 3.1 , page no. 51: We understand that you are not bound to accept the lowest or any tender you may receive.
- Invitation Letter in Serbian language states the following in page no. 3: " ugovor će biti zaključen sa najpovoljnijim ponuđačem u međunarodnom postupku javne nabavke". "Kriterijum za izbor najpovoljnije ponude je najniža ponuđena cena odgovarajućih i tehnički podobnih ponuda". (eng. The Contract will be concluded with the most favorable Tenderer at the open international public procurement process. The selection criteria of the most favorable Offer is the Lowest Evaluated, complaint and technically responsive Tender.)

Answer 1:

In accordance to Tender Documentation, Section II, Instruction to Tenderers, the criterion for awarding the contract is the Lowest Evaluated Tender Price of all

received tenders that were evaluated as compliant, technically and substantially responsive bids.

Question 2: How will the rate for overhead charges and profit be evaluated?

Excerpt from Tender Documents:

-Section 3, Paragraph 3.2: Rate for overhead charges and profit 13.5 (b) ii 14%

Answer 2:

Clause 13.5 of Red FIDIC prescribes:

“Each Provisional Sum shall only be used, in whole or in the part, in accordance with the Engineer's instructions and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, The Engineer may instruct:

- (a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 (Variation Procedure), and/or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Sub-contractor (as defined in Clause 5 (Nominated Subcontractors) or otherwise; and for which there shall be included in the Contract Price:
 - (i) The actual amounts paid (or due to be paid) by the Contractor, and
 - (ii) A sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate stated in the Contract data shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.”,

while “Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 (Provisional Sums).

In accordance to Tender Documentation, Section 3, Paragraph 3.2 APPENDIX TO TENDER – FINANCIAL OFFER, rate for overhead charges and profit is 14% of the actual amounts stated in point (b), sub point (i) of this clause 13.5.

Question 3:

In tender documentation, 2.3 qualification criteria, 1. Experience, point b — Particular experience, the tenderer shall meet minimum following criteria:

In the period from 01.01.2015. to bid submission date, completed works up to the total functionality of object, in construction and/or extension on minimum 3 (three) objects of public purpose (hospitals, health centres, nursing homes, educational and research facilities, indoor and outdoor sports and recreational facilities, cultural facilities, traffic terminals, post

offices and other facilities) involving a gross developed building area of more than 7.000 m² per object.

Regarding the request for minimum three objects (stated above), would it be acceptable to submit one object with gross floor area of more than 7.000 m², while the second and third one to be replaced with smaller objects, with cumulative gross floor area of more than 14.000 m²?

Please be noted that these objects meet all other criteria stated above.

Answer 3:

Regarding the request for minimum three objects above stated, any object with gross floor area of less than 7.000 m², will not be acceptable

Question 4:

Regarding 2.3 Qualification Criteria, 1.Experience, b) Particular:3)In the period from 01.01.2015. to bid submission date, completed works on the installation of the floor covering of characteristics of fire resistance Bfl s 1 (according to EN 13501-1 or equivalent) and slip resistance R9 (DIN 51130 or equivalent), at 1 (one) object, minimum area floor covering 4,000 m², please provide us with the following clarifications:

Question: Having in mind Clarifications No 8, question and answer No 4., would it be acceptable that, besides Final Payment Certificates, the documentary evidence should be Confirmation issued by the contractor to the subcontractor, with confirmation of the contracting authority?

Namely, there are situations in which the Final Payment Certificate is not yet issued, but the subcontractor has performed all requested works, so contractor together with contracting authority can confirm that those works were performed.

Please, have in mind that goal of Experience as Qualification criteria is proving that contractor has relevant experience so it would be significant for tenderers if the Employer will accept additional document (alternatively):

“- Documentary evidence:

The Tenderer shall submit copies of:

- Contracts including contract agreements, specifications and any further documents which present qualification criteria data,
- Final Payment Certificates or Confirmation issued by the contractor to the subcontractor, with confirmation of the contracting authority that required works of subcontractor were completed,
- Performance Certificates, such as OQ/IQ and PQ for the clean room(s).

If Confirmation issued by the contractor to the subcontractor, with confirmation of the contracting authority that required works of subcontractor were completed is provided, Performance certificates for the clean room(s) is not required.”

Answer 4:

As it stated in Clarification no. 8, in Answer no. 4, the bidder is obliged to prove that he has completed the works he listed, and as it prescribed by Tender documentation, to submit required documentation and other additional and relevant documents from which it can be determined. Accordingly, if the Final Payment Certificates has not been issued, and the final Client (Contracting Authority) has issued a certificate which confirmed that the works in question have been performed to the contracted scope and quality by the bidder, member of joint venture or subcontractor in this procurement procedure, this will be acceptable to the Contracting Authority. The Public Procurement Commission will evaluate the whole submitted evidence, taking into account the circumstances of each specific case.

Question 5:

Regarding form 3.5.8. Litigation History, where is stated: “Tenderers, all partners and subcontractors must provide evidence, in accordance with the law in countries in which they are established, not to fall into the categories listed in the data for qualification, item 5. Date of evidence submitted papers must not be older than 60 days before the deadline for submission of tenders”

- Besides Form 3.5.8., which evidence is needed as an additional proof of no litigation history, if any?
- Also, can You provide us additional explanation regarding on what kind of litigation is relevant (procurement contract litigations, labor disputes,etc)?

Answer 5:

-Section 2.3 Qualification Criteria, 1.Experience, b) Particular, clause 5. prescribed the following: "Tenders registered in Register of bidders, whose functioning is entrusted to Serbian Business Register Agency, according to Public Procurement Law of Serbia, shall be considered fulfilling abovementioned requirements and no related documentary evidences should be submitted.". All other tenderers (foreigners and tenderers from Serbia who are not registered in the Register of Bidders at the Serbian Business Registers Agency) must provide evidence, in accordance with the law of the country in which they are established, not to fall into the categories that are prescribed in clause 5. Date of evidence submitted papers must not be older than 60 days before the deadline for submission of tenders. Please, note that tenderers are not obliged to supply evidence that is publicly available at websites of competent bodies, and is supposed to specify such evidence.

-All kinds of litigation are relevant.

Question 6:

In tender documentation is required:

Page 42 - In the period from 01.01.2015. to bid submission date completed minimum 3 (three) clean rooms areas including validation, qualified in accordance with ISO classification (or equivalent standard). **At least one clean room area with a minimum floor space of 100 square meters has to satisfy ISO 5 or equivalent**, or better classification.

Page 65 - In the period from 01.01.2015. to bid submission date completed minimum 3 (three) clean rooms areas including validation, qualified in accordance with ISO classification (or equivalent standard). **At least one of clean room area have to satisfy ISO 5 or equivalent, or higher complexity classification.**

Please, provide us with clarification – at least one clean room area with a minimum floor space of 100 square meters has to satisfy ISO 5 **or** any of required minimum 3 clean rooms have to satisfy ISO 5?

Answer 6:

At least one clean room area with a minimum floor space of 100 square meters has to satisfy ISO 5.

Question 7:

In form 3.4.4. is stated: „The Tenderer shall also enter a statement of similar works previously executed by the proposed Subcontractors, including description, location and value of work, year completed, and name and address of the Employer/Engineer.“

This Tenderers statement is in free form, consisting of all required data for subcontractor, as proof of subcontractors experience, having in mind that tenderer can prove Particular experience through the subcontractors?

Answer 7:

Yes, this Tenderers statement should be in free form, consisting of all abovementioned required data.

In accordance to Tender Documentation (page 43), requirements in section 2.3 Qualification Criteria, point 1.b Particular experience, sub point 2) and 3), the Bidder may prove fulfillment through the subcontractors.

Question 8:

Regarding 2.3 Qualification Criteria, 1.Experience, b) Particular:3)In the period from 01.01.2015. to bid submission date, completed works on the installation of the floor covering of characteristics of fire resistance Bfl s 1 (according to EN 13501-1 or equivalent) and slip resistance R9 (DIN 51130 or equivalent), at 1 (one) object, minimum area floor covering 4,000 m², please provide us with the following clarification:

Is it acceptable that Tenderer provide references for floor covering with stronger characteristics than required, such as fire resistance Afl s1 (no reaction to flame) or similar and slip resistance R10 or similar?

Answer 8:

Yes, it is acceptable that tenderers provide references for floor covering with stronger characteristics than required by Tender Documentation.

Question 9:

Why is it required that the manufacturer of the clean room panels possesses the ISO 13485 certificate? This certificate applies to manufacturers of medical devices and not manufacturers of cleanroom panels, as cleanroom panels are not considered as medical devices. The majority of reputable cleanroom manufacturers do not possess this certificate Article 10 of The Law on public procurement of the Republic of Serbia ("Off Herald of RS", Nos. 124/2012, 14/2015 and 68/2015) guarantees avoidance of use of discriminatory conditions, technical specifications, or criteria by the Contracting authority.

Excerpt from Volume II Scope of Design/ Scope of Design/ 1.2 Clean rooms.pdf: -Page no. 3, Note no. 1: "Paneli za čiste sobe moraju biti proizvedeni od starne proizvođača koji poseduje sertifikat ISO 13485" (eng.: Cleanroom panels must be produced by a Manufacturer which possesses the ISO 13485 certificate).

Answer 9:

ISO 13485:2016 can also be used by suppliers or external parties that provide product, including quality management system-related services to such companies.

Requirements of ISO 13485:2016 are applicable to companies regardless of their size and regardless of their type, except where explicitly stated. Wherever requirements are specified as applying to medical devices, the requirements apply equally to associated services as supplied by the company.

On cleanroom market there are several cleanroom producers that went one step forward in quality control and certification, needed for cleanroom industry.

Possession of the upper mention certificate distinguishes producers of standard sandwich panels from cleanroom panels.

Furthermore, for this project, the designed cleanroom has the ISO 5 environment which has a very high standard of air purity.

Due to that tender is limited to minority, but not only one, cleanroom producers who are able to comply with very high standards needed for BIOSENS project.

In conclusion, ISO 13485 certificate is necessity for more demanding projects therefore it is necessary precondition in this project.

Question 10:

In Tender Documents, Volume I, Section 2.2. Tender Data Sheet, paragraph 10.1 is stated that Forms 3.4.1, 3.4.2, 3.4.3, 3.5.1, 3.5.2, 3.5.3, 3.5.7, 3.5.8, 3.5.9 and 3.5.10 shall be submitted for each partner of a Joint Venture.

- Considering that in Qualification Form 3.5.4 is stated that each partner who participate in tender should provide information, should each partner of Joint Venture also submit the Form 3.5.4?
- Should Qualification Form 3.5.5 be submitted by the leading partner for and on behalf of Joint Venture or each partner should submit this form in accordance with its own employed personnel which he provides for tender?
- Should Qualification Form 3.5.6 be submitted by the leading partner for and on behalf of Joint Venture or each partner should submit this form for the equipment that he provides for tender?

Answer 10:

- As it stated in Form 3.5.4, each partner of Joint Venture should submit the Form 3.5.4?
- Form 3.5.5. may be submitted by the leading partner of Joint Venture or any member of Joint Venture, bearing in mind that in this Form is a column: "Name of tenderer or partner" in which it is necessary to enter the names of the Tenderers or partners in Joint Venture who employ the persons listed as the responsible contractors.
- It is not necessary to submit a Qualification form 3.5.6 for each partner of the Joint venture who provides the equipment for the tender. It is sufficient to submit a Qualification form 3.5.6 by the one partner of the group of bidders (usually the leading partner) for and on behalf of the Joint venture.

Question 11:

In the Form 3.4.3. Power of Attorney is stated that Tenderer shall attach here the Power of Attorney authenticated by a competent body (e.g. public notary, court, embassies) authorizing

the signatory of the Tender. According to the paragraph 10.1 of Tender Data Sheet the Form 3.4.3 shall be submitted by each partner of Joint Venture. In case of JV, is it sufficient to attach here notarized signatures of authorized persons (OP form) for each partner in JV? In the Joint Venture/Consortium Agreement the leading partner will be authorized to sign the tender for and on behalf of Joint Venture.

Answer 11:

It is enough to submit the notarized signatures of authorized persons (OP form) for each member of Joint Venture, while the leading partner and person who will be authorized to sign the tender on behalf of JV, will be specified in the Joint Venture/Consortium Agreement, which should be signed by all members of the JV. The Contracting Authority reserves the right, during the evaluation procedure, to request the bidders to submit the Power of Attorney authenticated by a competent body (e.g. public notary, court, embassies) authorizing the signatory of the Tender, for each member of joint venture.

Question 12:

In Tender Documents, Volume I, Section 2.3 Qualification Criteria, 1 Experience, b - Particular requirement 1), on page 42/106, are requested references on construction/extension of public buildings. Whether the Employer will accept references on construction/extension of business-residential buildings?

Answer 12:

The Contracting Authority has defined the conditions of particular experience for participation in this procurement procedure, having in mind the subject of the procurement, that is, the purpose of the facility to be built. Accordingly, The Contracting Authority will accept references for facilities that are composed from parts of different purposes that you mentioned, but it is necessary that the greater part of that particular facility, in terms of squares-total construction area (more then 50%), should be the facility of public purpose.

Question 13:

In Tender Documents, Volume I, Section 2.3 Qualification Criteria, under point 2 Personnel capabilities, on page 43/106, is described minimum employed personnel. Since the scope of work include installation of mechanical control systems, we believe that it is necessary to add on the list following personnel:

Graduate master's degree Mechanical Engineer or equivalent - responsible contracting engineer for Responsible contractor of machine plant control systems - automation,

measurement and control (license no. 436 only for a company established in the employer's country) - minimum 1 person.

Answer 13:

The Contracting Authority remains with the requirements regarding the personnel capabilities, required by the Tender Documentation.

Question 14:

For staff who are not in the working relationship with the bidder, is it sufficient to submit a contract of supplementary work and PPP PD form for June?

Answer 14:

Supplementary work is work outside of the employment relationship and it is not acceptable for this procurement procedure, having in mind the provisions of the Tender documentation and the requirements for personnel capacity. Namely, the tender documentation required that the personnel is employed with the bidder (both, responsible contracting engineers and other staff).

Accordingly, personnel has to be in employment relationship i.e. persons employed under a contract for indefinite period of time or employed under a contract for definitive period of time.

Question 15:

In Tender Documents, Volume I, Section 4.2. General Conditions is stated:

"The tenderer is deemed to be fully acquainted with and in possession of these FIDIC Conditions of Contract. The tenderer may on request of the Employer be required to submit a copy duly countersigned by the person authorised to sign the Tender."

Please clarify which document, duly countersigned, the Tenderer will be required to submit on request of the Employer.

Answer 15:

The tenderer shall submit with his Tender a copy of page called CONDITIONS OF CONTRACT, as well as the complete Section 4.3, Particular Conditions of Contract, duly initialed by the person authorized to sign on behalf of the tenderer.

The tenderer will be required on request of the Employer to submit duly countersigned, General Conditions of Contract, i.e. Conditions of Contract for Construction" (FIDIC, Red

Book), First Edition 1999, published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC).

Question 16:

It Tender Documents, Volume I, Section 4.3 Particular Conditions of Contract, on page 99/106, is stated that the selected bidder is obligated to provide a Retention money guarantee. Please specify when is selected bidder obligated to provide Retention money guarantee, what is the value of the Retention money guarantee and expiration date for the Retention money guarantee.

Answer 16:

In accordance with the data from Form 3.2 APPENDIX TO TENDER - FINANCIAL OFFER, and in connection with clause 14.3 Application for Interim Payment Certificates, the amount of the Retention Money is 3% of the Interim Payment Certificates, which means that the limit of Retention Money is 3% of the value of the total works performed.

In accordance with clause 14.9 Payment of Retention Money of General Conditions of Contract, when the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor.

In accordance with clause 14.9 Payment of Retention Money of Particular Conditions of Contract, If proposed by the Contractor and approved by the Employer, the second half of the Retention Money will be certified for payment after:

- (a) the Engineer has issued a Taking-Over Certificate for the whole of the Works, and
- (b) the Employer has received a Retention Money Bank Guarantee in the amount of half of the Retention Money in a form, and from a Bank, approved by the Employer.

The Retention Money Guarantee shall provide a surety for the second half of the Retention Money for the whole of the Works held for the rectification of defects arising during the remainder of the Contract Period and the completion of any remaining work to be executed under Clause 11 [Defects Liability] or Clause 12 [Measurement and Evaluation]. The terms and conditions for the Retention Money Guarantee shall be the same as those stated in sub-clause 4.2 for a Performance Security.

Accordingly, if the Contractor proposes and this is accepted by the Employer, the second half of the Retention Money will be certified for payment after the Engineer has issued a Taking-Over Certificate for the whole of the Works and after the Employer has received a Retention Money Bank Guarantee in the amount of half of the Retention Money in a form, and from a Bank, approved by the Employer. The value of this guarantee is half of the value of the total

retained money, i.e. half of 3% of the value of the total works performed, with a validity period of 70 days longer than the expiration of Defect Notification Period.

Question 17:

Please specify an expiration date for the Advance payment guarantee.

Answer 17:

In accordance with provisions of Form no. 4.4.2 (Advance Payment Security), the bank guarantee for the advance payment expires 70 days after the expected expiry of the Time for Completion.

Time for Completion means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 (Time for Completion) of General Conditions of Contract, as stated in the Contract Data (with any extension) under Sub-Clause 8.4 (Extension of Time for Completion) of General Conditions of Contract, calculated from the Commencement Date.

Question 18:

In accordance to Clarification no. 8 issued on June 29, 2020, please confirm that is sufficient for Bidders to submit BON JN for years 2016, 2017 and 2018 and Balance sheet, Income statement and Statistical report for year 2019 (for statistical and other purposes) as evidence for qualification requirements under point 1 Experience, subpoint a) General regarding operating income, point 4.2. Financial position and as attachment to Qualification Form 3.5.7. Financial capability.

Answer 18:

Yes, we confirm that it is sufficient for Bidders to submit BON JN for years 2016, 2017 and 2018 and Balance sheet, Income statement and Statistical report for year 2019 (for statistical and other purposes) as evidence for qualification requirements under point 1 Experience, subpoint a) General regarding operating income, point 4.2. Financial position and as attachment to Qualification Form 3.5.7. Financial capability.

Question 19:

„In TD pg 20 and 21/106 is stated that subcontractor can participate in several Bids. Likewise, the conflict of interest, among the others, occurs when „f. The Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid;”.

Please clarify, whether the Bidder acting on this tender with a subcontractor who participated in the preparation of the part of the Design (technical documentation), will be considered to have a conflict of interest? The Bidder and its affiliates did not prepare any part of technical documentation nor any part of tender Documentation.“

Answer 19:

Tender Documentation, Section 2: Instructions to Tenderers, General, clause 3. Eligibility and qualifications, sub clause 3.11, prescribes that the Employer requires that candidates, tenderers, contractors, suppliers or consultants participating in an award procedure or a contract shall not have a conflict of interest, as well as, the assessment of whether or not there is a conflict of interest has to be carried out on a case by case basis, considering the actual risk of conflict based on the specific circumstances of the case at stake.

Bearing in mind aforementioned, the participation of the entity who prepared the design (technical documentation), as a tenderer or subcontractor in this procurement procedure, is considered as a conflict of interest.

Question 20:

Is the Bidder obliged to translate documentation issued in Croatian language?

Answer 20:

Documentation in Croatian language does not have to be translated. The Contracting Authority reserves the right to request from bidder to provide a translation of certain parts of the documentation if necessary.

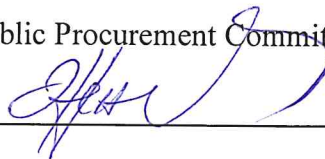
Question 21:

Whether translation of all documents including contracts, final payment situations, performance certificate etc have to be certified by authorised (court) translator ?

Answer 21:

Translation of documents doesn't have to be certified by authorized (court) translator.

Public Procurement Committee



Dragana Nenadić